317.

SUPREME COURT OF THE UNITED STATES.

No. 110.

ALPHONSO WETMORE, PLAINTIFF IN ERROR,

VERSUS

THE UNITED STATES.

ERROR FROM DISTRICT COURT UNITED STATES, DISTRICT OF MISSOURI.

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The President of the United States to the marshal of the District of Columbia, greeting:

Whereas in a suit lately depending in the district court of the United States for the Missouri district, wherein the United States were plaintiffs, and Alphonso Wetmore was defendant, the said plaintiffs, at the September term last of the said court, recovered against the said Wetmore, by the judgment and consideration of the said court, the sum of three thousand five hundred and fifty-seven dollars and two cents, for their damages, besides their costs, &c.

And whereas the said Alphonso Wetmore, to reverse the said judgment, hath sued out his writ of error, returnable before the Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next, and hath given bond, with security, that he will prosecute said writ with effect, and answer all damages and costs, if he fail to make his plea good.

You are therefore commanded to cite Roger B. Taney, the Attorney General of the United States, to appear at the said Supreme Court, to hear the errors which may be assigned in the said cause by the said Wetmore; and have you then there this writ, with the manner in which you have executed the same.

Witness, James H. Peck, judge of the United States for the Missouri district, at the city of Saint Louis, in the said district, this 19th day of December, 1832, with his official seal.

JAMES H. PECK. [L. S.]

Know all men by these presents, that we, Alphonso Wetmore and , are held and firmly bound unto the United States of America, in the just and full sum of two hundred dollars, current money of the United States, to be paid to the said United States; to which payment we bind ourselves, our heirs, &c. jointly and severally by these presents: sealed with our seals, and dated the first day of November, in the year eighteen hundred and thirty-two.

Whereas, lately, at a district court of the United States for the district of Missouri, in a suit depending in said district court, wherein the United States of America were plaintiffs, and Alphonso Wetmore was defendant, judgment was rendered against said Alphonso Wetmore; and the said Alphonso Wetmore having obtained a writ of error to reverse the judgment in the aforesaid suit, and filed a copy thereof in the clerk's office of the said district court, and a citation to the said plaintiffs, citing them to be and appear at the Supreme Court of the United States, to be holden at Washington, at the next term thereof. Now, the condition of the above obligation is such, that, if the said Alphonso Wetmore shall prosecute his said writ with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force.

ALPHONSO WETMORE, [SEAL.]
LINDSEY P. MARSHALL. [SEAL.]

UNITED STATES OF AMERICA.—*The President of the United States of America to the judge of the court of the United States for the Missouri district, holden in and for said district, greeting:*

That, because in the records and proceedings, and also in rendering a judgment in a suit before him, between the United States, demandants, and Alphonso Wetmore, defendant, manifest error hath intervened to the great damage of the said defendant, as in his complaint hath been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if a judgment thereof be given, then under your seal you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate jus-

tices of the Supreme Court of the United States, on the second Monday of January next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court, at Washington aforesaid, the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the independence of the United States.

[SEAL.] Attest: JO. GAMBLE, *Clerk.*

The UNITED STATES, *vs.* ALPHONSO WETMORE. } *Missouri District, sct.*

Be it remembered, that, heretofore, to wit, at the September term, in the year of our Lord one thousand eight hundred and thirty-two, of the district court of the United States for the Missouri district, the said United States, by George Shannon, esquire, their attorney, filed in open court their declaration against Alphonso Wetmore, in the words and figures following, to wit:

Declaration.

In the district court of the United States for Missouri district, September term, A. D. 1832.

MISSOURI DISTRICT, *ss.*

The United States of America, by George Shannon, their attorney, complain of Alphonso Wetmore of a plea of trespass on the case. For that, whereas the said Alphonso Wetmore heretofore, to wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty-one, at the district aforesaid, was indebted to the said United States of America in the sum of three thousand three hundred and eighty-eight dollars and eighteen cents, for so much money before that time by the said Alphonso Wetmore had and received to and for the use of the said United States of America; and being so indebted, he, the said Alphonso Wetmore, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said United States of America to pay them the said sum of money, when he, the said Alphonso Wetmore, should be thereunto afterwards requested. Nevertheless, the said Alphonso Wetmore, not regarding his said promises and undertakings, hath not as yet paid the said sum of money, or any part thereof, to the said United States of America, although often requested so to do; but the said Alphonso Wetmore, to pay them the same, hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said United States of America, of five thousand dollars; and therefore, they bring their suit, &c., &c.

GEORGE SHANNON,
Att'y of the United States for the Missouri District.

Plea.

And the said Alphonso Wetmore waiving process, by his attorney, appeared and filed his plea in the words following, to wit: And the said defendant, by Geyer and Gamble, his attorneys, comes and defends the wrong

and injury, when, &c., and says that he did not undertake and promise in manner and form as the plaintiffs have above thereof complained against him; and of this he puts himself upon the country, &c.

GEYER and GAMBLE, *for Dft.*

And the plaintiffs likewise.

SHANNON, *U. S. Att'y Dist. Mo.*

Issue joined.

And thereupon the following proceedings were had.

The UNITED STATES, *vs.* ALPHONSO WETMORE. } *Thursday, September 6, 1832.*

George Shannon, esquire, attorney of the United States for the Missouri district, files here in open court a declaration on behalf of the United States against Alphonso Wetmore; and the said Alphonso Wetmore, by Mr. Geyer, his attorney, waiving process, files his plea to the declaration aforesaid, and thereupon issue being joined, by consent and prayer of both the said parties, come a jury, to wit: Richard Gentry, James Reed, Jefferson T. Rogers, Daniel Ashby, John D. Coulter, Thomas D. Conger, William Leintz, Patrick Orr, David Peeler, Wilson Primm, Jesse E. McCampbell, Uel Ramsey, twelve good and lawful men, who, being duly elected, tried, and sworn, well and truly to try the issue within joined between the parties aforesaid, upon their oath aforesaid, do say, that the said Alphonso Wetmore did undertake and promise, in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damage of the said plaintiffs by them sustained, by reason of the non-performance of the promises and undertakings in the declaration mentioned, to the sum of three thousand five hundred and fifty-seven dollars and two cents. Therefore, it is considered by the court, that the said United States recover against the said Alphonso Wetmore, their damages aforesaid, in form aforesaid, by the jury assessed, and also their costs and charges by them about their suit in this behalf expended, and that they have thereof execution.

Verdict.

Judgment.

And the said Alphonso Wetmore, by his attorneys aforesaid, filed in court his bill of exceptions, as follows, to wit: Be it remembered, that, at the trial of the above cause, the plaintiffs, to maintain the issue on their part, read in evidence an account of the defendant, as paymaster, being a transcript from the books and proceedings of the Treasury, certified according to the act of Congress in that behalf, and authenticated under the seal of the Treasury Department; which account and transcript is for the difference of pay and forage between a major of cavalry and a major of infantry, from the 24th day of April, 1816, to the thirty-first day of May, 1831, amounting, in the whole, to the sum of three thousand three hundred and eighty-eight dollars and eighteen cents; which balance or sum is represented and certified in and by said transcript, to be the difference of pay and forage claimed by him, (the defendant,) between a major of cavalry and a major of infantry, to which he is not considered entitled by the accounting officers of the Treasury of the United States; which account and transcript is in the words and figures following:

Bill of exceptions.

Treasury transcript read in evidence.

Alphonso Wetmore, Paymaster, to the United States, Dr.

For difference of pay and forage between a major of cavalry and a major of infantry, improperly received by him, and now brought to his debit, viz.

Pay from 24th April, 1816, to 31st January, 1831, (as per settlement of 1st August, 1831,) - - - -	$1,772 32
Forage, - - - - - - -	1,417 86
Pay from 1st February, 1831, to 31st August, 1st November, -	70
Forage, - - - - - - -	56
And pay recharged in the same settlement, from 1st February to 31st May, 1831, - - - - - -	40
Forage, - - - - - - -	32
Dr.,	$3,388 18

Pay,	$1,882 32
Forage,	1,505 86
Dr.,	$3,388 18

TREASURY DEPARTMENT,
2d Auditor's Office, November 18, 1831.

(Signed) R. T. QUEEN, *Clk.*

2d Comptroller's Office, November 21, 1831.

(Signed) Examined. E. REYNOLDS.

No. 10,564.

TREASURY DEPARTMENT,
Second Auditor's Office, November 18, 1831.

I certify that I have examined and adjusted the account of Alphonso Wetmore, paymaster, on account of his staff, pay, &c., and find that he is indebted to the United States as follows:

For pay from the 24th April, 1816, to 31st August, 1831,				$1,842 32
For forage,	do	do	do	1,473 86
For pay from the 1st February, 1831, to 31st May, 1831,			$40	
For forage	do	- - -	32	
				72
				$3,388 18

The same being the difference of pay and forage claimed by him between a major of cavalry and a major of infantry, to which he is considered as not entitled by the accounting officers of the Treasury of the United States, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller thereon.

(Signed) W. B. LEWIS, *Second Auditor.*

JAMES B. THORNTON, esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this 21st day of November, 1831.
(Signed) ENOCH REYNOLDS,
Acting Second Comptroller.

Pursuant to the act of Congress of March 3, 1817, entitled "An act to provide for the prompt settlement of public accounts," I, William B. Lewis, Second Auditor of the Treasury Department, do hereby certify that the aforgoing is a true transcript from the books and proceedings of the Treasury.
W. B. LEWIS.

Be it remembered, that William B. Lewis, esquire, who certified the aforegoing transcript, is now, and was at the time of doing so, Second Auditor of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Louis McLane, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the city of Washington, this twenty-first day of November, in the year of our Lord one thousand eight hundred and thirty-one.

[L. S.] LOUIS McLANE.

It was admitted on the trial, that the defendant had served as a paymaster (duly appointed as such,) in the army of the United States, from the said 24th day of April, 1816, to the said 31st day of May, 1831; and that the amount stated in said account and transcript to be due from the defendant to the United States consists solely of the difference between the pay and emoluments allowed by the accounting officers to the defendant, and the pay and emoluments retained and claimed by him during the period of service aforesaid.

The defendant, at the trial of this cause, claimed to be allowed for his service during the period aforesaid, the pay and emoluments allowed, by law, to other officers of the general staff of the army of the rank of major, and who are entitled to the pay and emoluments of majors of cavalry.

Army Register, 1816, offered in evidence; rejected.

The defendant then offered to read to the jury the Army Register, prepared and published by the Adjutant and Inspector General, in August, 1816; which register was delivered to the defendant, and other officers of the army; in which register the officers of the pay department, created by the act of Congress of 24th April, 1816, are arranged as belonging to the general staff of the army; which evidence was, on motion of the plaintiffs, rejected by the court; to which opinion of the court, the defendant, by his counsel, excepts.

Army Register, 1831; rejected.

The defendant also offered in evidence the Register of the Army of the United States for the year eighteen hundred and thirty-one, prepared, published, and subscribed by the Adjutant General; in which register the officers of the pay department are arranged under the head, and as appertaining to the general staff of the army; which evidence, as offered, was rejected by the court, and the defendant, by his counsel, excepted to the said decision rejecting said testimony. The defendant then offered to read to the jury a general order, dated "head quarters of the army, Adjutant General's Office, Washington, 11th June, 1832." Order No. 50, signed by the adju-

General order, June 11, 1832; rejected.

tant general, and purporting to have been issued by command of Major General Alexander McComb, commander-in-chief; which order prescribes the dress of the officers, non-commissioned officers, musicians, and privates of the army, and other regulations for the government of the army; and contains, among other things, the following, to wit: "The general staff is to include the adjutant general, the inspectors general, the aids de camp, the officers of the quartermasters' department, the officers of the subsistence department, the officers of the pay department, the officers of the medical department, the commissary general of purchases." To the reading which general order, the plaintiffs, by their counsel, objected; and the court sustained the objection, and rejected the evidence so offered; to which opinion of the court, the defendant, by his counsel, excepts. No further evidence being offered, the defendant moved the court to instruct the jury as follows:

Defendant's instructions.

1st. That the defendant is entitled to the pay and emoluments allowed by law to the officers of the general staff of the army, of the rank of major, that is to say, the pay and emoluments allowed to majors of light dragoons, by the act of Congress of 12th April, 1808.

2d. That if the jury find from the evidence that the defendant was, from 24th April, 1816, to the time of the statement of the account read in evidence, an officer in the general staff of the army, he is entitled, for the time he has so served, to the pay and emoluments allowed by law to the officers of the general staff of the rank of major.

Refused plaintiff's instructions given.

Which instructions were by the court refused; and the court instructed the jury that the defendant, in virtue of his office, was entitled only to receive the pay and emoluments of a major of infantry. To which opinions of the court in refusing the instructions prayed for by the defendant, and also to the instructions given, the defendant, by his counsel, excepts, and prays the court to sign and seal his bill of exceptions; which is done accordingly, this 7th September, 1832.

JAMES H. PECK. [L. S.]

MISSOURI DISTRICT, *set.*

I, Joseph Gamble, clerk of the United States' court for the Missouri district, certify that the foregoing is a full a true transcript of the record and proceedings in a certain cause determined in said court, wherein the United States were plaintiffs, and Alphonso Wetmore was defendant, as the same is of record in my office.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said court, the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty-two.

[SEAL.] JO. GAMBLE, *Clk.*